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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 CORY PEDERSON,

12 Plaintiff,

13 vs.
14

15 GENERAL MOTORS, LLC, and DOE
1 through DOE 10 inclusive,

16 Defendants,
17
18

Case No.

'11 CV0929 BTM CAB

COMPLAINT FOR VIOLATION OF
THE SONG-BEVERLY CONSUMER
WARRANTY ACT

PLAINTIFF DEMANDS TRIAL BY
JURY

19 Plaintiff alleges:

20 **I.**

21 **JURISDICTION**

22 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332.
23 Plaintiff CORY PEDERSON (hereinafter "Plaintiff") is, and at all times mentioned
24 herein was, a competent adult. Plaintiff at all times mentioned herein was a citizen
25 of California.

26 2. Defendant GENERAL MOTORS, LLC is a limited liability company
27 organized under the laws of Delaware, having its principal place of business in
28 Michigan, and having as its sole member General Motors Company, a Delaware

1 corporation with its principal place of business in Michigan. For diversity purposes,
2 Defendant GENERAL MOTORS, LLC, is a citizen of the states of Delaware and
3 Michigan.

4 3. The amount in controversy, without interest and costs, exceeds
5 \$75,000.00, as specified by 28 U.S.C. §1332.

6 II.

7 VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT

8 4. Defendants DOE 1 through DOE 10 inclusive are sued herein. DOE 1
9 through DOE 10 are each independently, or as a representative of another defendant
10 in this suit, responsible in some manner for the causes of action set forth herein and
11 the damages sustained by Plaintiff.

12 5. Plaintiff purchased the subject 2009 GMC Yukon, VIN:
13 1GKFK03249R277474 (“the subject vehicle”) on or about December 20, 2009 from
14 Reynolds Buick, Inc. in West Covina, California. The subject vehicle is a new motor
15 vehicle that was bought primarily for personal, family, or household purposes or it
16 is a new motor vehicle with a gross vehicle weight under 10,000 pounds that was
17 bought or used primarily for business purposes by an entity to which not more than
18 five motor vehicles are registered in this state. The subject vehicle is a “new motor
19 vehicle” under the Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq
20 (“the Act”).

21 6. Reynolds Buick, Inc. is engaged in the business of distributing or selling
22 consumer goods at retail. Plaintiff is a “buyer” under the Act.

23 7. GENERAL MOTORS, LLC manufactures, assembles, or produces
24 consumer goods. GENERAL MOTORS, LLC is a “manufacturer” under the Act.

25 8. GENERAL MOTORS, LLC issued an “express warranty” to Plaintiff in
26 which, *inter alia*, GENERAL MOTORS, LLC undertook to preserve or maintain the
27 utility or performance of the subject vehicle. Said warranty was an integral factor in
28 Plaintiff’s decision to purchase the subject vehicle.

1 9. The subject vehicle has suffered from nonconformity(s) to warranty,
2 including, but not limited to, defect(s) which have manifested in recurrent activation
3 of the check engine light (“CEL”), the reduced engine power light, and the SES light,
4 as well the recurrent, and unexpectantly sudden, loss of engine power. Said
5 nonconformity(s) have substantially impaired the vehicle’s use, value, or safety to
6 Plaintiff.

7 10. Plaintiff has delivered the vehicle to GENERAL MOTORS, LLC or its
8 authorized repair facility(s) for repair of said nonconformity(s). GENERAL
9 MOTORS, LLC or its authorized repair facility(s) have failed to service or repair the
10 subject vehicle to warranty after a reasonable number of attempts.

11 11. The subject vehicle was not fit for the ordinary purposes for which such
12 goods are used and was not of the same quality as those generally acceptable in the
13 trade. GENERAL MOTORS, LLC breached the implied warranty of merchantability
14 and implied warranty of fitness. Plaintiff is entitled to revoke acceptance of the
15 subject vehicle under the Act.

16 12. GENERAL MOTORS, LLC has not replaced the vehicle or otherwise
17 made restitution to Plaintiff pursuant to its obligations under the Act.

18 13. Plaintiff is informed and believes and thereupon alleges that GENERAL
19 MOTORS, LLC’s refusal to replace the vehicle or make restitution to Plaintiff was
20 wilful and not the result of a good faith and reasonable belief that the facts imposing
21 said statutory obligation were absent.

22 14. Pursuant to the Act, Plaintiff is entitled to replacement of the vehicle
23 with a new motor vehicle substantially identical to the vehicle replaced and any sales
24 or use tax, license fees, registration fees, and other official fees which the buyer is
25 obligated to pay in connection with replacement, or restitution in an amount equal to
26 the actual price paid or payable by Plaintiff and collateral charges such as sales tax,
27 license fees, registration fees, and other official fees less an amount directly
28 attributable to use by Plaintiff prior to the time Plaintiff first delivered the vehicle for

1 repair.

2 15. Plaintiff is entitled to recover incidental, consequential, and general
3 damages, including, but not limited to, reasonable repair, towing, and rental car costs
4 actually incurred by Plaintiff.

5 16. Plaintiff is entitled to recover a civil penalty up to two times the amount
6 of actual damages for GENERAL MOTORS, LLC's wilful refusal to comply with its
7 statutory obligations under the Act.

8 17. Plaintiff is entitled to recover a sum equal to the aggregate amount of
9 costs and expenses including attorney's fees based on actual time expended and
10 reasonably incurred in connection with the commencement and prosecution of this
11 action.

12
13 WHEREFORE, Plaintiff prays judgment against GENERAL MOTORS, LLC
14 as follows:

15 1. For actual damages, including collateral charges, and incidental,
16 consequential, and general damages. To date, such damages include, but are not
17 limited to Plaintiff's down payment (\$500.00), monthly payments (totaling
18 \$14,289.52 through July 13, 2011), additional monthly payments as necessary, and,
19 in amounts according to proof, vehicle registration expenses, rental car expenses,
20 towing expenses, expenses inadvertently omitted herein, and other future expenses
21 reasonably incurred by Plaintiff in connection with this action; and

22 2. For a civil penalty up to two times the amount of actual damages
23 (\$120,583.46); and

24 3. For rescission of the contract and restitution of consideration; and

25 4. For interest on said sum from date of rescission to date of judgment
26 herein; and

27 5. For attorney's fees based on actual time expended and reasonably
28 incurred in connection with the commencement and prosecution of this action; and

1 6. For costs of suit incurred in connection with the commencement and
2 prosecution of this action; and

3 7. For such other and further relief as the court deems proper.

4
5 WHEREFORE, Plaintiff demands trial by jury.

6
7 DATED: April 29, 2011

THE BICKEL LAW FIRM, INC.
Attorneys for Plaintiff

8
9 By: 

LARRY W. CHAE

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CORY PEDERSON

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

THE BICKEL LAW FIRM, INC.
750 B St., Ste. 1950, San Diego, CA 92101 Tel. (619) 374-4100

DEFENDANTS

GENERAL MOTORS, LLC, and DOE 1 through DOE 10 inclusive,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0929 BTM CAB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity ☐ 5 Other (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | <input checked="" type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF <input type="checkbox"/> DEF |
| Citizen of Another State | <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 yeb | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332 28:1331 yeb

Brief description of cause:
Violation of California's Song-Beverly Consumer Warranty Law (Cal. Civ. Code §1790 et seq.)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 135,372.00 **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/29/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.